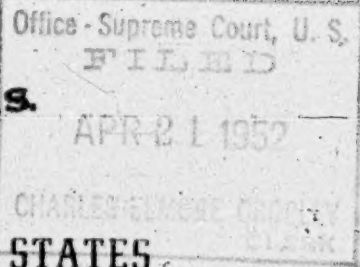


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 474

MARION W. STEMBRIDGE,

Petitioner,

vs.

THE STATE OF GEORGIA,

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA
AND THE SUPREME COURT OF GEORGIA

REBUTTAL BRIEF OF PETITIONER IN CERTIORARI

MARION W. STEMBRIDGE,

Pro se

Home Address:

Milledgeville, Georgia.

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In reply to petitioner's brief on certiorari, respondent has filed a brief, the essential meaning of which is: "Respondent respectfully denies the jurisdiction of this Court and contends that no decision of the questions here presented has been obtained by petitioner from the highest court of Georgia empowered to act thereon."

The U. S. Code, Title 28, Section 1257 (3) reads: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had", and petitioner will deal with that wording.

There are two Appellate courts in Georgia—the Supreme Court of Georgia and the Court of Appeals of Georgia, and the Supreme Court of Georgia is the higher of the two.

There are three Federal Questions in petitioner's case.

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We will first go into respondent's assertion that petitioner's Federal Question 1 was not decided by the highest court of a State in which a decision could be had. Respondent also makes the additional assertion that this Federal Question was not laid at the right time.

There are more than one hundred decisions of this Court in *civil* cases even in which this Court has held that if the Federal Question was considered and decided by the State Appellate Court, that settled it.

There are more than one hundred decisions of this Court in criminal cases in which this Court has held that if the State Appellate Court considered the Federal Question properly and timely laid and considered and decided such question, that settled it.

This Federal Question 1 was considered properly and timely laid by the Court of Appeals of Georgia and was considered and decided by this Court of Appeals. (R. 229-230.)

This decision of the Court of Appeals of Georgia, adverse to petitioner, was immediately placed by petitioner before the Supreme Court of Georgia on application for certiorari. Petitioner's claim was of violation of petitioner's Federal rights guaranteed by the Fourteenth Amendment to the Constitution of the United States and the effect of this claim, if allowed, would have been to have completely voided the judgment of the trial court, however adequate any of the State's non-Federal grounds against petitioner may have been. The decree, or order, of the Supreme Court of Georgia denying Certiorari was neces-

sarily a legal decision of petitioner's claim. But, for purposes of tests, let us assume even that the Supreme Court of Georgia should formally declare that they refused to decide petitioner's claim; that still would not defeat petitioner's claim. States or State courts may not impair a citizen's Federal Constitutional rights under the Fourteenth Amendment in criminal trials by any method, plan, scheme, procedure, or the lack thereof, or by refusing to decide a petitioner's claim. Petitioner's Federal Question 1 was decided by both the Court of Appeals of Georgia and the Supreme Court of Georgia and was certainly decided by the highest court of a State in which a decision could be had.

Petitioner's Federal Question 1 is properly before this Supreme Court of the United States.

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The claims in petitioner's Federal Question 2 and Federal Question 3 of violations of petitioner's rights guaranteed by the Constitution of the United States were first made by petitioner before the Supreme Court of Georgia. (R. 217, last paragraph; R. 218, paragraph 4; R. 219, paragraph 3.) These claims were of violations of petitioner's Federal Constitutional rights by the next lower court (the Court of Appeals of Georgia) and these claims could not have been made any earlier or to any other State court.

These claims were of violations of petitioner's Federal rights guaranteed by the Fourteenth Amendment to the Constitution and the effect of these claims, if allowed, would have been to have reversed the judgment of the Court of Appeals of Georgia and to have sent the case back to the trial court for a new trial; however adequate any of the State's non-Federal grounds against petitioner may have been alleged to have been.

The decree, or order, of the Supreme Court of Georgia denying certiorari was necessarily a legal decision of petitioner's claims by the highest court of a State in which a decision could be had, or it had the same effect as a decision insofar as petitioner's claims were concerned.

Petitioner's Federal Question 2 and Federal Question 3 were properly and timely laid and were necessarily decided (or if decision upon them was refused, the effects on petitioner's rights are the same as if they had been decided) by the highest court of a State in which a decision could be had; and petitioner's Petition for Certiorari is properly before this Supreme Court of the United States on Federal Question 2 and Federal Question 3.

There are only three Federal Questions in petitioner's case and each of these Federal Questions is properly before this Court.

Respondent makes various other hair-splitting and labyrinthian technical objections which are both without basis and without a proper place in a case of this kind.

This case is a claim of violation of petitioner's rights under the Fourteenth Amendment to the Constitution of the United States in the trial of a criminal case and this Court has held time after time that in such cases the question before this Court is: Were the petitioner's rights under the Fourteenth Amendment of the Constitution actually violated? In some instances where this charge has been made, the claim for relief was nothing more formal than a rambling report informing this Court of the victim's claim and this Court has ordered the Record sent up from whatever court or courts had the Record or parts thereof, and without regard to the decisions, decrees, or orders of intervening courts, however high; and granted the victim relief.

Too, this is a criminal case in which petitioner has been under sentence to the penitentiary for almost three years;

with all of the attendant temporary cloud upon petitioner's reputation, and the uneasiness, insecurity, uncertainty, and losses to petitioner's business that inescapably inhere in such a situation; and all because evidence that would have shown petitioner *not guilty* was suppressed and withheld from the trial court and from the trial jury (Par. 6 of the affidavits of each of the trial jurors, R185-197) and perjured testimony was knowingly used instead. Too, petitioner has now spent more than \$16,000.00 in attorneys' fees, court costs, and other necessary costs and expenses in his case, in addition to three years of effort that from the standpoint of a layman must be regarded as totally wasted insofar as any constructive asset value to petitioner is concerned.

This is not right. No part of this is right and this should be stopped now.

All of the parties to this case are now before this Supreme Court and petitioner respectfully submits that this Supreme Court of the United States should now give a decision on merits of this case:

At no point in respondent's brief, does respondent deny any of petitioner's five charges of violations of petitioner's rights guaranteed to him by the Fourteenth Amendment to the Constitution and at no point does respondent deny any statement of fact that petitioner has ever made with reference to these five charges.

At no point in respondent's twenty-six page brief (with one-half page of blank paper) did respondent find room to make the simple statement: We deny that evidence that would have shown defendant *not guilty* was deliberately suppressed and withheld from the trial court and from the trial jury; or, We deny that perjured testimony was knowingly used; or, We deny that petitioner's rights under the equal protection clause and the due process clause, as

listed under his Federal Question 2 were violated; or, We deny that petitioner's rights under the due process clause and the equal protection clause as listed under his Federal Question 3 were violated.

No charge of petitioner, that his Constitutional rights were violated (as listed under any of the five specifications of his three Federal Questions) has ever been denied and no statement of fact, made by petitioner in connection with any of these charges, has ever been denied.

And this is true notwithstanding that the attorneys for respondent, who prepared and signed respondent's brief, were the Attorney General of Georgia, an Assistant Attorney General of Georgia, a Special Deputy Assistant Attorney General of Georgia, and the State's attorney involved in this case; and the further fact that each of these attorneys knew that petitioner's charges, *if not denied*, controlled petitioner's case.

Some of these charges had been made before three courts and all of these charges had been made before two courts in which respondent had full and proper legal service and in which respondent had both the manifest legal duty and the self interest to deny these charges if they were not true; but not one of petitioner's charges, and not one of petitioner's statements of fact with reference to these charges, has ever been denied.

Petitioner's charges were not denied because they could not be denied. If these charges had been denied the Record would show that they were true.

Petitioner wishes to lay before this Court the following facts:

1. In petitioner's case, it is charged and not denied that evidence that would have shown petitioner *not guilty* and would have resulted in a verdict of *not guilty*, was deliberately suppressed and withheld from the trial court and from

the trial jury. (The first specification in petitioner's Federal Question 1, page 3, Petition for Certiorari.)

No statement of fact made by petitioner in connection with this charge has ever been denied.

2. In petitioner's case, it is charged and not denied that perjured testimony was knowingly used. (The second specification in Federal Question 1, page 3, Petition for Certiorari.)

No statement of fact made by petitioner in connection with this charge has ever been denied.

3. In petitioner's case, it is charged and not denied that petitioner's rights under the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution were violated. (Federal Question 2, page 3, Petition for Certiorari.)

No statement of fact made by petitioner in connection with this charge has ever been denied.

4. In petitioner's case, it is charged and not denied that petitioner's rights under the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution were violated. (Federal Question 3, page 3, Petition for Certiorari.)

No statement of fact made by petition in connection with this charge has ever been denied.

Petitioner can only repeat some statements made in his Petition for Certiorari:

"Petitioner's rights guaranteed to him by the Constitution of the United States have been violated.

"All other courts have turned down petitioner's claim for relief.

"Besides this Supreme Court, the only possible relief would be energy, time, and money, consuming habeas corpus.

"Habeas corpus before the State courts, with the State Supreme Court and the State Court of Appeals still holding that *Burke v. State*, 205 Ga. 656, controls petitioner's case two years after this Supreme Court of the United States directed *Burke* in this same case, *Burke v. Ga.*, 338 U. S. 941 to overlook (disregard) the State Courts and go direct to the Federal District Court, would be futile and a total waste of time and money. (Petitioner's case is distinguished from the *Burke* case in this: In the *Burke* case charge of the knowing use of perjured testimony was immediately and vigorously denied, while in petitioner's case this charge has never been denied. Too, the *Burke* case did not involve the suppression and withholding of evidence that would have shown defendant not guilty.) After a year or two more of effort, expense, and trial, appeals, applications for certiorari, etc., this case would inevitably be before this Supreme Court of the United States again.

"But even if this Supreme Court should direct petitioner to overlook the State Courts in habeas corpus, there is in petitioner's case, by now, another overwhelming factor. Petitioner has already spent more than \$15,000.00 (now \$16,000.00) in attorneys' fees and costs in his case in trying to defend himself against this fraud. Surely, there should be a limit somewhere to what a citizen of the United States is required to do to protect himself against violations of his rights guaranteed to him (without condition or price) by the Constitution.

"In all conscience, this limit has long ago been passed in petitioner's case; and petitioner respectfully submits that this Supreme Court of the United States should . . . void the judgment of the trial court below."

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Conclusion

Because of the truths set out in this brief and in petitioner's Petition for Certiorari and in petitioner's two other briefs; petitioner respectfully submits that this Supreme Court of the United States should void the judgment in the trial court in petitioner's case.

Respectfully submitted;

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